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5 Attorneys for Cross-Defendant,
6 CHENEY ADRIENNE SHAPIRO;

FILED
Superior Court of California
County of Los Angeles

MAR 09 2018

Sherri R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF LOS ANGELES

11 DAVID A. GLAZER, an individual,
12 Cross-Complainants,
13 vs.

14 CHENEY ADRIENNE SHAPIRO; CHENEY
15 SHAPIRO DESIGNS 401K; CHENEY
16 SHAPIRO DESIGNS; CHENEY ADRIENNE
17 SHAPIRO, TRUSTEE OF CROSS-
18 DEFENDANT CHENEY SHAPIRO DESIGN
19 401K; RESOURCEFUL DEVELOPMENTS,
20 INC.; RICHARD JUDSON WILLIAMS;
SILVERWOOD PROPERTIES, INC.;
KENNETH HOWARD SHAPIRO; PODLEY
ASSOCIATES REALTORS; LINDA
DARLINGTON SEYFFERT; SEISMIC
SAFETY, INC.; EDMUND J. SYLVIS; KEN
LAMARR COMPTON; AND DOES 2
THROUGH 250,

21 Defendants.

22 AND RELATED CROSS-COMPLAINT(S).

Case No.: BC 669741

Assigned to the Honorable: Richard E. Rico
Dept. 17

ANSWER OF CROSS-DEFENDANT
CHENEY ADRIENNE SHAPIRO TO CROSS-
COMPLAINT OF PODLEY ASSOCIATES
REALTORS AND LINDA ARLINGTON
SEYFFERT

25 Cross-Defendant CHENEY ADRIENNE SHAPIRO ("Cross-Defendant"), for herself
26 alone, files her Answer to the Cross-Complaint of Podley Associates Realtors and Linda Arlington
27 Seyffert ("Cross-Complaint") as follows:

28 ///

Richardson ♦ Harman ♦ Ober PC
234 E. Colorado Blvd., 8th Floor
Pasadena, California 91101
Telephone: 626.449.5577

ORIGINAL

CIT/CASE: BC669741
LEA/DEF#:

RECEIPT #: CCH524880095
DATE PAID: 03/09/18 04:14 PM
PAYMENT: \$435.00 310
RECEIVED:

RECEIVED:
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

1

GENERAL DENIAL

2 By virtue of and pursuant to the provisions of the Code of Civil Procedure section 431.30,
3 this answering Cross-Defendant generally and specifically denies each and every, all and singular,
4 conjunctively and disjunctively, allegation contained in said Cross-Complaint and each and every
5 part thereof, and each and every cause of action thereof, and further specifically denies that Cross-
6 Complainants have been injured or damaged in the sum alleged, or in any other sum, or at all, by
7 reason of any carelessness, negligence, act or omission of this answering Cross-Defendant.

8

FIRST AFFIRMATIVE DEFENSE

9

(Fails to State Facts Sufficient to Constitute a Cause of Action)

10 1. As a first and separate affirmative defense to each and every cause of action stated in
11 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that said causes of
12 action fail to state facts sufficient to constitute a cause or causes of action against this answering
13 Cross-Defendant.

14

SECOND AFFIRMATIVE DEFENSE

15

(Statute of Limitations)

16

2. As a second and separate affirmative defense to each cause of action stated in
17 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the Cross-
18 Complaint on file herein is barred by reason of the applicable statutes of limitations, including but
19 not limited to Code of Civil Procedure sections 337, 340, 337.1, 337.15, 338, 339, 343 and Civil
20 Code section 2079.

21

THIRD AFFIRMATIVE DEFENSE

22

(Comparative Negligence)

23

3. As a third and separate affirmative defense to each and every cause of action stated in
24 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-
25 Complainants were negligent in and about the matters alleged in the Cross-Complaint and failed to
26 exercise due care for their own protection and that Cross-Complainants' damages, if any, are
27 directly and proximately the result in whole or in part from Cross-Complainants' own negligence.
28 Accordingly, Cross-Complainants' damages must be reduced in proportion to Cross-

1 Complainants' own fault in bringing about their damages.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 *(Third Party Negligence)*

4 4. As a fourth and separate affirmative defense to each cause of action stated in
5 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that third parties
6 were careless and negligent in and about the matters alleged in the Cross-Complaint and that said
7 carelessness and negligence on the part of said third parties proximately contributed to the
8 happening of the accident and to Cross-Complainants' injuries, loss and/or damage, if any,
9 allegedly sustained. Therefore, any damages awarded to Cross-Complainant shall be diminished
10 in proportion to the amount of fault attributed to said third parties.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 *(Laches)*

13 5. As a fifth and separate affirmative defense to each cause of action stated in Cross-
14 Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the Cross-
15 Complaint on file herein is barred by reason of laches in that Cross-Complainants waited an
16 unreasonable period of time to bring the Cross-Complaint to the detriment of this answering
17 Cross-Defendant.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 *(Unclean Hands)*

20 6. As a sixth and separate affirmative defense to each cause of action stated in Cross-
21 Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-Complainants
22 are barred by reason of Cross-Complainants' coming into court with unclean hands.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 *(Waived Right to Relief Sought)*

25 7. As a seventh and separate affirmative defense to each cause of action stated in Cross-
26 Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-Complainants
27 have waived their rights to the relief sought in the Cross-Complaint against this answering Cross-
28 Defendant by virtue of their acts, conduct, representations and omissions.

EIGHTH AFFIRMATIVE DEFENSE

(Mitigate Damages)

3 8. As a eighth and separate affirmative defense to each and every cause of action stated in
4 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-
5 Complainants could have, by the exercise of reasonable diligence, limited or prevented their
6 damages, if any, as a result of the actions alleged in the Cross-Complaint, that Cross-Complainants
7 have failed or refused to do so. Such failures or refusals on the part of Cross-Complainants
8 constitute failure to mitigate their damages.

NINTH AFFIRMATIVE DEFENSE

(Acts of Fictitiously Named Cross-Defendants)

11 9. As a ninth and separate affirmative defense to each cause of action stated in
12 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that she is not
13 legally responsible for the acts and/or omissions of those Cross-Defendants fictitiously named
14 herein as ROES.

TENTH AFFIRMATIVE DEFENSE

(Intervening, Supervening and Superseding Causes)

17 10. As a tenth and separate affirmative defense to each cause of action stated in
18 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the injuries
19 and damages of which the Cross-Complainants complain were proximately caused or contributed
20 to by the acts of other Cross-Defendants, persons and/or entities. Said acts were in intervening,
21 supervening and superseding a cause of the injuries and damages, if any, of which the Cross-
22 Complainants complain, thus barring Cross-Complainants from any recovery against this
23 answering Cross-Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

26 11. As an eleventh and separate affirmative defense to each cause of action stated in
27 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-
28 Complainants have engaged in conduct with respect to the activities and/or premium which are the

1 subject of the Cross-Complaint and by reason of said activities and conduct, are estopped from
2 asserting any claims for damages or seeking any other relief against this answering Cross-
3 Defendant.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 *(Damages Caused by Acts or Omissions Beyond Answering Cross-Defendant's Control)*

6 12. As a twelfth and separate affirmative defense to each cause of action stated in Cross-
7 Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the damages
8 sustained by Cross-Complainants, if any, were proximately caused by the acts, omissions,
9 negligence, fraud, and/or breach of obligations by persons other than this answering Cross-
10 Defendant and beyond this answering Cross-Defendant's supervision and control.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 *(Standard of Care Met)*

13 13. As a thirteenth and separate affirmative defense to each cause of action a stated in
14 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that in all
15 aspects this answering Cross-Defendant met the applicable standard of care regarding Cross-
16 Complainants.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 *(Active Negligence of Cross-Complainants)*

19 14. As a fourteenth and separate affirmative defense to each cause of action stated in
20 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the
21 damages sustained or to be sustained by Cross-Complainants, if any, were proximately caused or
22 contributed to by the active negligence of Cross-Complainants in that they personally participated
23 in a negligent act or omission that brought about the injuries or damages of which they are now
24 complaining. Consequently, neither the law nor any agreement entitles Cross-Complainants to an
25 indemnity.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 *(Non-Economic Damages)*

28 15. As a fifteenth and separate affirmative defense to each cause of action stated in

1 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges liability for non-
2 economic damages, if any, is limited to that percentage of those damages which are in direct
3 proportion of this answering Cross-Defendant's percentage of fault in accordance with Civil Code
4 section 431.2(a).

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 *(Lack of Privity)*

7 16. As a sixteenth and separate affirmative defense to each cause of action stated in
8 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges she was not a
9 party to the original agreement which forms the basis of Cross-Complainants Cross-Complaint
10 and therefore, Cross-Complainants lacks the required privity to raise the claims alleged.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 *(Lack of Justifiable Reliance)*

13 17. As a seventeenth and separate affirmative defense to each cause of action stated in
14 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-
15 Complainants lacked any justifiable reliance concerning the supposed misstatements attributed to
16 this answering Cross-Defendant.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 *(Set-Off to Recovery)*

19 18. As an eighteenth and separate affirmative defense to each cause of action stated in
20 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that she is entitled
21 to a set-off as a result of any recovery made by Cross-Complainants from any other party, in
22 connection with the damages claimed in this lawsuit.

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 *(Damages Did Not Arise From Cross-Defendant's Alleged Breach)*

25 19. As a nineteenth separate affirmative defense to each cause of action asserted stated in
26 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that as to each
27 alleged cause of action set forth in the Cross-Complaint, the conditions set forth therein and the
28 damages related thereto did not arise out of any action by this answering Cross-Defendant nor any

1 act or omission related thereto and thus recovery is precluded.

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 *(Several Liability for Non-Economic Damages)*

4 20. The right of Cross-Complainants to recovery herein, if any right exists, is reduced and
5 limited to the percentage of negligence attributable to this answering Cross-Defendant pursuant to
6 Section 1431.2 of the California Civil Code.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 *(Reservation of Right to Assert Additional Affirmative Defenses)*

9 21. As a twenty-first and separate affirmative defense to each cause of action stated in
10 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that she currently
11 has insufficient information upon which to form a belief as to whether she may have additional, as
12 yet unstated, affirmative defenses available. This answering Cross-Defendant therefore reserves
13 the right to assert additional affirmative defenses in the event discovery indicates that they would
14 be appropriate.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 *(Breach of Contract)*

17 22. As a twenty-second and separate affirmative defense to each cause of action stated in
18 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that any
19 obligations owed by her under any alleged contract were excused by Cross-Complainants' breach
20 of the alleged contract.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 *(Authorization)*

23 23. As a twenty-third and separate affirmative defense to each cause of action stated in
24 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that by virtue of
25 the acts of the Cross-Complainants, and/or the persons and/or entities acting on their behalf,
26 Cross-Complainants are barred from prosecuting the purported causes of action set forth in the
27 Cross-Complaint by the doctrine of authorization.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Lack of Deception)

3 24. As a twenty-fourth and separate affirmative defense to each cause of action stated in
4 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the actions
5 taken by this answering Cross-Defendant were not deceptive.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Contribution)

8 25. As a twenty-fifth and separate affirmative defense to each cause of action stated in
9 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that at all times
10 mentioned herein, Cross-Complainants were negligent, careless, reckless and unlawfully
11 conducted themselves so as to directly and proximately contribute to the happening of the incident
12 and occurrence of the alleged damages, all of which said negligence bars either completely or
13 partially the recovery sought by the Cross-Complainants.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

16 26. As a twenty-sixth and separate affirmative defense to each cause of action stated in
17 Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that the Cross-
18 Complainants expressly, voluntarily, and knowingly assumed all risks about which they complain
19 of in the Cross-Complaint and, therefore, are barred either totally or to the extent of said
20 assumption from any damages.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Active and Primary Liability)

27. As a twenty-seventh and separate affirmative defense to each cause of action stated in Cross-Complainants' Cross-Complaint, this answering Cross-Defendant alleges that Cross-Complainants' conduct, as alleged in the Cross-Complaint, was such that any and all liability based thereon was active and primary in nature, so as to preclude any recovery sought in the Cross-Complaint.

111

1 **WHEREFORE**, this answering Cross-Defendant prays as follows:

2 1. That Cross-Complainants take nothing by way of the Cross-Complaint on file herein;

3 2. That judgment be entered in the within action in favor of this answering Cross-

4 Defendant upon the issues of the Cross-Complaint;

5 3. For an award to this answering Cross-Defendant of attorney's fees, if allowed by law,

6 and costs of suit herein incurred; and

7 4. For such other and further relief as the Court may deem just and proper.

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9 DATED: March 8, 2018

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RICHARDSON ♦ OBER PC

By:


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PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) SS.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 234 East Colorado Blvd., 8th Floor,
Pasadena, California 91101.

6 On March 9, 2018, I served the foregoing document described as: **ANSWER OF CROSS-**
7 **DEFENDANT CHENEY ADRIENNE SHAPIRO TO CROSS-COMPLAINT OF PODLEY**
8 **ASSOCIATES REALTORS AND LINDA ARLINGTON SEYFFERT** on all interested parties
in said action by placing a true copy thereof in a sealed envelope addressed as stated on the
attached service list:

- BY MAIL:** I am "readily familiar" with Richardson | Ober PC's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I caused such documents to be transmitted to the telephone number of the addressee listed above, by use of facsimile machine telephone number (626) 449-5572. The facsimile machine used complied with *California Rules of Court*, Rule 2.306(a)(1) and no error was reported by the machine.
- BY PERSONAL SERVICE:** I caused a copy of such documents to be delivered by hand to the offices of the addressee between the hours of 9:00 a.m. and 5:00 p.m.
- BY OVERNIGHT EXPRESS:** By placing a true copy in a separate envelope for each addressee named on the attached service list, with the name and address of the person served shown on the envelope as indicated on the service list, and by sealing the envelope and placing it for collection and delivery by Overnight Express with delivery fees paid or provided for in accordance with ordinary business practices.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 9, 2018, at Pasadena, California.

Debra Condragh

1 **SERVICE LIST**

2 **RE: Glazer v. Cheney Adrienne Shapiro, et. al.**

3 **Case No.: BC 669741**

4
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